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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1964

HOMER TRIMBLE,

Petitioner

v.

TEXAS STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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NO. 1174

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STATEMENT OF THE CASE

This action is an appeal by Petitioner, Homer Trimble, from the action of the Respondent, Texas State Board of Registration for Professional Engineers, in revoking the license of Petitioner, Homer Trimble, to practice engineering in the State of Texas upon the grounds that Petitioner was guilty of misconduct in the practice of professional engineering, such misconduct being the offering of a bribe to certain city officials in the City of Kermit, Texas, whereby Petitioner would obtain certain engineering contracts with the City of Kermit, Texas.

The facts of this case are stated in the opinion of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, which opinion is set forth in Petitioner's Appendix at pp. 48-50 and is reported at 388 S.W. 2d 331, and in the opinion of the Supreme Court of the State of Texas, which opinion is set forth in Petitioner's Appendix at pp. 45-46 and is reported at 387 S.W. 2d 876.

OPINIONS BELOW

The 109th Judicial District Court of Winkler County, Texas, after a jury trial of the instant case under the preponderance of the evidence rule, entered judgment setting aside and holding void the order of Respondent, Texas State Board of Registration for Professional Engineers, which revoked the engineering license of Petitioner, Homer Trimble. The Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, on the 10th day of June, 1964, reversed the judgment of the trial court and remanded the case to the trial court for a trial before the Court under the substantial evidence rule rather than a trial before a jury under the preponderance of the evidence rule. The

Supreme Court of Texas, on the 13th day of January, 1965, refused Petitioner's (Homer Trimble's) Application for Writ of Error (no reversible error). On the 17th day of February, 1965, Petitioner's Motion for Rehearing of Application for Writ of Error was overruled by the Supreme Court of Texas.

JURISDICTION

It is asserted by Respondent that there has not been a final judgment rendered by the highest court of the State of Texas in the present case, and therefore, the Supreme Court of the United States does not now have jurisdiction.

In the alternative, it is questioned by Respondent that any substantial Federal question is presented for adjudication by the Supreme Court of the United States.

In the further alternative, Respondent contends that the interlocutory judgment and decree of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas should be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

STATUTES INVOLVED

The statute involved is produced in the Appendix to this motion.

ARGUMENT

This case was instituted by Petitioner to set aside an order of the Respondent, Texas State Board of Registration for Professional Engineers, which revoked the license of Petitioner, Homer Trimble, to practice engineering in the State of Texas.

Charges had been filed with the Respondent (Trial Court S.F. 64-72) alleging that Petitioner had violated

Section 22(b) of Article 3271a, Texas Civil Statutes, in that Petitioner was guilty of misconduct in the practice of professional engineering, such misconduct being the offering of a bribe to certain officials of the City of Kermit, Texas, whereby Petitioner was to obtain certain engineering contracts with the City of Kermit, Texas. After a hearing upon the charges against Petitioner before the Respondent, an order was entered by Respondent revoking the engineering license of Petitioner (Trial Court S.F. 64). From this order of revocation Petitioner appealed to the 109th Judicial District Court of Winkler County, Texas.

Upon a trial of the case before the trial court, the Petitioner filed a Motion in Limine (Trial Court Tr. 45a-45b), which was sustained by the trial court, which prohibited the Respondent from introducing any evidence in the trial bearing upon the issue of whether the Petitioner did in fact offer a bribe to certain officials of the City of Kermit, Texas. The only matters dealt with in the trial court were issues concerning whether the Respondent complied with the provisions of Section 22(b) of Article 3271a, Texas Civil Statutes, in connection with the notice given the Petitioner of the charges filed against him, and the conduct of the hearing upon such charges before the Respondent, Texas State Board of Registration for Professional Engineers.

The foregoing issues were submitted to the jury over the objection of the Respondent (Trial Court Tr. 33) that such issues were questions of law rather than fact and should be considered by the trial court under the substantial evidence rule rather than by the jury under the preponderance of the evidence rule.

The Respondent appealed the decision of the trial court, which set aside the order of revocation of Pe-

titioner's license by Respondent, to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas. The Court of Civil Appeals reversed the judgment entered by the trial court and remanded the case for a new trial. The Court of Civil Appeals, in its opinion, held that the trial court was in error in excluding the testimony offered by Respondent dealing with whether Petitioner actually offered a bribe to certain officials of the City of Kermit, Texas, and was further in error in submitting issues to the jury under the substantial evidence rule, as appeals from orders of the Respondent are properly triable before the court under the substantial evidence rule.

The Petitioner appealed the decision of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas to the Supreme Court of Texas by way of Application for Writ of Error. The Supreme Court of Texas refused to grant the Application for Writ of Error of Petitioner on the grounds that there was no reversible error. On a Motion for Rehearing by Petitioner, the Supreme Court of Texas, in a *per curiam* opinion, stated in essence, that a review of the record revealed that the Respondent had complied with the provisions of Article 3271a, Texas Civil Statutes, in connection with the notice and hearing given Petitioner upon the charges filed against him. However, the opinion of the Supreme Court of Texas did, in no manner, disturb the decision of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas in remanding the case to the trial court for a new trial. The trial court will have before it upon the new trial of the present case the issue of whether the order of revocation of the Respondent was reasonably supported by substantial evidence.

In 28 U.S.C., § 1257, it is stated that:

"*Final judgments* or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court. . . ." (Emphasis added).

The foregoing provision has been the subject of numerous decisions, and it is well settled that before the decision of a state court will be reviewed by the Supreme Court of the United States, the state court judgment must be final as to all parties and issues and that this requirement of finality has not been met merely because the major issues in a case have been decided and only a few loose ends remain to be tied up. *Republic Natural Gas Co. v. Oklahoma,* 334 U.S. 62, 68; *Bruce v. Tobin,* 245 U.S. 18; *Mississippi Central R. Co. v. Smith,* 295 U.S. 718.

The present case is subject to a new trial at the trial court level, and such trial will be subject to the further review or correction by the appellate courts of the State of Texas. As the present case has been remanded to the trial court for further action, which action will be subject to review of the appellate courts of this State, there has not been a final judgment in this case by the highest court of the State of Texas as required by 28 U.S.C. § 1257, to give the Supreme Court of the United States jurisdiction, at this time, to review this case. See *Market Street R. Co. v. Railroad Commission,* 324 U.S. 548, 551; *Cincinnati Street R. Co. v. Snell,* 179 U.S. 395; *Scott v. Booth,* 253 U.S. 475; *Laclede Gas Light Co. v. Public Service Commission,* 304 U.S. 398.

The Supreme Court of the United States will not review judgments of state courts that rest on adequate and independent state grounds. *Black v. Cutter Laboratories,* 351 U.S. 292, 298; *Herb v. Pitcairn,* 324 U.S. 117, 125; *Klinger v. State of Missouri,* 13 Wall. (U.S.) 257, 263; *Murdock v. Memphis,* 20 Wall. (U.S.) 590,

636; *Berea College v. Kentucky,* 211 U.S. 45, 53; *Enterprise Irrig. Dist. v. Farmers Mut. Canal Co.,* 243 U.S. 157, 164; *Fox Corp. v. Muller,* 296 U.S. 207, 210; *Dixon v. Duffy,* 342 U.S. 33; *Young v. Ragen,* 337 U.S. 325. Applying this principle to the instant case, the judgment of the state court rests on adequate and independent state grounds, in that the appellate courts of the State of Texas have merely passed upon the issue of whether the Respondent complied with certain requirements of Article 3271a, Texas Civil Statutes, and it is respectfully submitted that this Petition for Writ of Certiorari should be dismissed for the season that Petitioner has not presented for adjudication by the Supreme Court of the United States any substantial Federal question.

The cases are clear that a decision of a state court resting on grounds of state procedure does not present a Federal question. *French v. Hopkins,* 124 U.S. 524; *Iowa Cent. R. Co. v. Iowa,* 160 U.S. 389; *Gibson v. Mississippi,* 162 U.S. 565; *Wood v. Brady,* 150 U.S. 18. The cases are also equally clear that the construction of state laws is the exclusive responsibility of state courts. *Speiser v. Randall,* 357 U.S. 513; *Lerner v. Casey,* 357 U.S. 468. Applying the foregoing principles to the instant case, the Respondent respectfully submits that there is no substantial Federal question presented.

The issues dealt with by the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas and the Supreme Court of Texas dealt with the question of what procedural or evidentiary rules would be followed in the courts of Texas in an appeal from an order of the Respondent, and the further question of whether the Respondent had complied with certain statutory requirements contained in Article 3271a, Texas Civil Statutes. The decision by the Court of Civil Appeals

and the Supreme Court of Texas rested on adequate and independent state grounds, and therefore the questions here submitted are so unsubstantial as not to warrant further argument.

In view of the foregoing, it is respectfully submitted that the interlocutory judgment and decree of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas should be, in the alternative, affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

CONCLUSION

We respectfully submit, therefore, that the Petitioner did not establish that there has been a final judgment or decree rendered by the highest court of the State of Texas in which a decision could be had and that for such reason this Petition for Writ of Certiorari should be denied. We further respectfully submit that the Petitioner did not present a substantial Federal question and that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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SERVICE

I, Hawthorne Phillips, First Assistant Attorney General of Texas, am a member of the Bar of the Supreme Court of the United States, and I do hereby certify that a copy of the foregoing Motion has been forwarded by United States Mail, First Class, postage pre-paid to Petitioner's attorneys, Mr. Robert Ziesenheim, 110 North Stanton, El Paso, Texas, Mr. Hill D. Hudson, P. O. Box 190, Pecos, Texas, and Mr. John R. Lee, P. O. Box 766, Kermit, Texas.

Hawthorne Phillips

HAWTHORNE PHILLIPS
Assistant Attorney General of Texas

APPENDIX

Statutes Involved

Section 22, Revised Civil Statutes of Texas, 1925:

"The Board shall have the power to revoke the certificate of registration of any registrant who is found guilty of:

"(a) The practice of any fraud of deceit in obtaining a certificate of registration;

"(b) Any gross negligence, incompetency, or misconduct in the practice of professional engineering as a registered professional engineer.

"In determining any such charges the Board shall proceed upon sworn information furnished it by any reliable resident of this State; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three (3) copies of the same shall be filed with the Secretary of the Board. Upon receipt of such information the Board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the Secretary of the Board shall cause a copy of the Board's order and of the information to be served upon the accused at least thirty (30) days before the date appointed in the order for the hearing. The accused may appear in person or by counsel, or both, at the time and place named in the order and make his defense to the same. If the accused fails or refuses to appear, the Board may proceed to hear and determine the charges in his absence. If the accused pleas guilty, or upon a hearing of the charges the Board and a majority of its members shall find them to be true, it may enter an order revoking the certificate of registration of such registered professional engineer. The Board shall have the power, through its Chairman or Secretary, to administer oaths and

compel the attendance of witnesses before it as in civil cases in the district court by subpoena issued over the signature of the Secretary and seal of the Board. If the accused desires the evidence to be preserved and shall so inform the Board before the hearing is begun and shall deposit with the Board such a sum of money as the Board may deem reasonably necessary for the employment of a stenographer, then the Board shall employ such stenographer and when so employed he shall be the official stenographer of the Board for the purpose of reporting the evidence and proceedings of such Board. In proceedings under this section, as under others, a majority of the Board shall constitute a quorum.

"When the Board has completed such hearing it shall make a record of its findings and order and shall cause a certified copy thereof to be forwarded to the accused.

"Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration by the Board, as hereinabove authorized, shall have the right to file suit within thirty (30) days after receiving notice of the Board's order revoking his certificate of registration, in the district court of the county of his residence, or of the county in which the alleged offense relied upon as grounds for revocation took place, to annul or vacate the order of the Board revoking the certificate of registration. Said suit shall be filed against the Board as defendant, and service of process may be had upon its Chairman or Secretary. The suit shall be tried as other civil causes, the burden of proof devolving upon the plaintiff assailing the order of revocation.

"The Board, for reasons it may deem sufficient, may re-issue a certificate of registration to any person whose certificate has been revoked, provid-

ed four (4) or more members of the Board vote in favor of such re-issuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, and a charge of Three ($3.00) Dollars shall be made for such issuance."